weight of the ointment to about 40% by total weight of the ointment of a structurant, and from about 0.1% by total weight of the ointment to about 40% by total weight of the ointment of a rheology enhancer. The rheology enhancer is selected from the group consisting of polyisobutylene; hydrogenated polyisobutene and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isononyl isononanoate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isododecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isohexadecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isopropyl palmitate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; and combinations thereof.

The '144 reference discloses cosmetic compositions comprising a particulate styrene-ethylene-propylene copolymer; an emollient selected from the group consisting of isododecane, a C_9-C_{12} aliphatic hydrocarbon, a C_9-C_{12} isoparaffin, a mineral oil, isotetracosane, an ester made from a C_3-C_{12} alcohol and a C_3-C_{18} carboxylic acid, and mixtures thereof; and a third component selected from the group consisting of a colorant, a sunblock agent, and mixtures thereof. The particulate styrene-ethylene-propylene copolymer is present in the composition in an amount of from 0.5% by weight to 90% by weight, and more preferably, from 1.0% by weight to 25% by weight. The emollient is present in the composition in an amount of from 10% by weight to 90% by weight, and more preferably, from 10% by weight to 70% by weight. If the third component includes a colorant, the colorant is present in the composition in an amount of from 1.0%

by weight to 85% by weight, and more preferably, from 5% by weight to 50% by weight. If a sunblock agent is present in the composition, the sunblock agent is present in the composition in an amount of from 0.50% by weight to 90% by weight.

Significantly, the '144 reference fails to disclose the specific rheology enhancers as required by claim 1. At best, the rheology enhancers disclosed in the '144 reference include isododecane in combination with styrene-ethylene-propylene diblock copolymers[1]. As noted above, however, in Applicants' claim 1 when the rheology enhancer includes isododecane, the isododecane is used in combination with triblock ethylene/propylene/styrene copolymers and triblock butylene/ethylene/styrene copolymers. No where in the '144 reference is the use of triblock ethylene/propylene/styrene copolymers or any butylene/ethylene/styrene copolymers taught or suggested.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art references must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under numbers (1) and (2) above, as

[1] EP 0497144B1 at page 2, lines 25-27. The Office refers to the styrene-ethylene-propylene diblock copolymers of '144 as being the same or equivalent to the ethylene/propylene/styrene triblock copolymers used as rheology enhancers in Applicants' claim 1. As discussed more fully herein, please note that Applicants' assert that this is not the case; specifically, the

the cited references, alone or in combination, have not taught or suggested all of the claimed limitations of Applicants' claim 1, and further, there is no motivation to modify and/or combine the references to arrive at Applicants' claim 1.

As noted above, '144 fails to teach or suggest the specific rheology enhancers as required by claim 1. The Office states that Example 2 of the '144 reference, which discloses the admixture of isododecane with a styrene-ethylene-propylene diblock copolymer, is one of the rheology enhancers claimed in Applicants' claim 1. With all due respect, Applicants' assert that Example 2 (or any other Example) fails to disclose any of the specific rheology enhancers required in claim 1. Specifically, while '144 discloses combining isododecane with the diblock styrene-ethylene-propylene copolymer, no where in '144 is it taught or suggested to use the combination of isododecane with the triblock ethylene/propylene/styrene copolymers, and triblock butylene/ethylene/styrene copolymers as a rheology enhancer in its cosmetic composition.

Specifically, in Applicants' claimed invention, triblock copolymers are preferred for the rheology enhancers as these copolymers produce a gelled or film-forming composition, allowing the composition to easily transfer from an absorbent article such as a diaper to form a film-like barrier layer on the skin, thereby protecting the skin from water and moisture, which can cause diaper rash and irritation. As known by one skilled in the art, diblock copolymers (such as the styrene-ethylene-propylene copolymers, available as Kraton 1701X, of the '144 reference) are not as effective in forming a film-like barrier as diblock copolymers are produced in chains of

---

diblock copolymers in '144 are not equivalent to the triblock

polymers. As such, a gelled or film-like network is harder to produce as compared to the use of triblock copolymers, which form in a grid-like matrix. As such, the styrene-ethylene-propylene diblock copolymers of '144 are not equivalent to the ethylene/propylene/styrene triblock copolymers useful as rheology enhancers in Applicants' claim 1.

Furthermore, to produce the composition as disclosed in the '144 reference, the styrene-ethylene-propylene copolymer is mixed with an emollient to form a transparent, uniform, preliminary dispersion of copolymer. As known by one skilled in the art, as the copolymer is not dissolved but is formed into a dispersion of copolymer (i.e., containing solid particulates), the copolymer will not gel to perform like the rheology enhancers of the instantly claimed invention; that is, the copolymer will not allow the composition to form into a gelled or film-forming barrier on the skin's surface.

The Morrison and Grollier et al. references fail to overcome the above shortcomings. Specifically, Morrison discloses a solid or semi-solid hydrocarbon gel for use as an ointment, balm, or salve to treat wounds, burns, or injuries to the skin. The hydrocarbon gel comprises from greater than about 0% to about 99% by weight solid or semi-solid hydrocarbon and from greater than about 0% to about 50% by weight of at least one block copolymer selected from the group consisting of a triblock copolymer; a radial block copolymer; a multi-block copolymer; a diblock copolymer; and mixtures of these polymers. Suitable hydrocarbons for use in the hydrocarbon gel include paraffin wax, petrolatum, synthetic waxes, mineral waxes, vegetable oil waxes, polyethylene waxes, microcrystalline waxes,

---

copolymers used in Applicants' claim 1.

natural waxes such as carnauba, beeswax, and the like.[2] Suitable block copolymers include rubber-type polymers consisting of styrene monomer units and rubber monomer units, and/or comonomer units; diblock styrene polymers such as styrene-ethylenepropylene, styrene-ethylenebutylene, styrene-butadiene, and styrene-isoprene; and triblock styrene polymers such as styrene/ethylene/butadiene/styrene, styrene/butadiene/styrene, and styrene/isoprene/styrene.[3]

Optionally, a liquid hydrocarbon, such as white mineral oil, can be included in the hydrocarbon gel of Morrison in an amount ranging from about 5% to 75% by weight.[4] Additionally, when the hydrocarbon gel is a solid hydrocarbon gel, the gel may optionally include from about 0.1% to about 50% by weight additional ingredients such as various waxes. Examples of the various waxes include carnauba wax, beeswax, or candellia wax.[5]

Grollier et al. disclose a sunscreen composition containing at least one oil-soluble agent absorbing UV rays and at least one polyisobutylene. The polyisobutylene has a viscosity-average molecular weight of between 8,000 and 65,000 at ambient temperature. The sunscreen composition can optionally comprise fatty substances such as mineral, animal or vegetable oils or waxes, fatty acids, fatty acid esters such as triglycerides of fatty acids containing from 6 to 12 carbon atoms, fatty alcohols and oxyethylenated fatty alcohols, water, monoalcohols or lower polyalcohols containing from 1 to 6 carbon atoms, or an aqueous alcohol solution. The sunscreen compositions have a higher

---

[2] U.S. 6,340,467 at column 2, lines 26-30.
[3] *Id.* at column 3, lines 17-62.
[4] *Id.* at column 2, lines46-51.
[5] *Id.* at column 4, lines 34-38.

protection index than that of conventional sunscreen compositions which contain only liposoluble UV screens.

No where is it disclosed to use isododecane in combination with ethylene/propylene/styrene copolymers, and butylene/ethylene/styrene copolymers in the compositions of either the Morrison or Grollier et al. references. Moreover, no where in these cited references is there any disclosure of the use of isododecane as a rheology enhancer.

In addition to the disclosure of isododecane as a rheology enhancer, the Office states in the Office action dated April 24, 2006 and, again in the final Office action dated November 30, 2006, that the combination of cited references further discloses each and every limitation of claim 1 using the polyisobutylene disclosed in Grollier et al. as the rheology enhancer. Specifically, the Office states that Grollier et al. disclose that the addition of polyisobutylene to a skin care composition has the advantage of protecting human epidermis against UV radiation, and as such, one skilled in the art would be motivated to use the polyisobutylene in the cosmetic composition of '144.

As noted in M.P.E.P. §2142, in establishing obviousness, the Office must show references that teach all of the claimed limitations along with some motivation or suggestion, either in the references themselves or in knowledge generally available to one skilled in the art, to combine the references and arrive at the claimed subject matter.[6] The mere fact that the references

[6] As further set forth in M.P.E.P. §2143.01, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the reference itself, or in the

can be combined to arrive at the claimed subject matter does not render the resultant combination obvious, unless the prior art also suggests the desirability of the combination. In re Mill, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). A close reading of the cited references clearly indicates that one skilled in the art would not have been so motivated and, without Applicants' disclosure as a blueprint (which the Office had the benefit of utilizing), such a combination of the '144, Morrison, and Grollier et al. references would not have been made.[7]

As noted above, the Office states that one skilled in the art would be motivated to combine the polyisobutylene of Grollier et al. with the '144 and Morrison references simply because Grollier et al. disclose that the addition of polyisobutylene to a skin care composition has the advantage of protecting human epidermis against UV radiation. This generic statement, without anything further, is not sufficient motivation for one skilled in the art, at the time Applicants' invention was made, to combine cited references and arrive at Applicants' invention. Specifically, providing a sunblock agent to protect the skin form sunburns is merely an optional

---

knowledge generally available to one or ordinary skill in the art.

[7] M.P.E.P. §2142 further provides that in order to reach a proper determination under 35 U.S.C. §103(a), the Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. Knowledge of Applicants' disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences." The tendency to resort to "hindsight" based upon Applicants' disclosure is often difficult to avoid due to the very nature of the examination process. However, as stated by the Federal Circuit, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned

ingredient in the '144 reference. Furthermore, if a sunblock agent is desired for use in the cosmetic composition of '144, the '144 reference provides numerous suitable sunblock agents. As such, why would one skilled in the art, reading the '144 reference, be motivated to use an additional sunblock agent? Additionally, there are a myriad of sunblock agents in the art, many of which could be suitable for use in the cosmetic compositions of '144. What is important is that there is no motivation or suggestion to use the polyisobutylene sunblock agent of Grollier et al. over any of the other enormous number of sunblock agents described in the art.

Additionally, while polyisobutylene is disclosed in the Grollier et al. reference, the Grollier et al. reference fails to disclose the polyisobutylene in its composition in combination with a structurant being present in the composition in an amount of from about 20% by total weight to about 40% by total weight as required in Applicants' claim 1. Specifically, the only amounts of structurant disclosed in the reference are in the working Examples, and the Examples show structurant amounts of at most 15.6%.[8] As such, none of the cited references disclose any of the specific rheology enhancers in combination with an emollient and structurant in the amounts required of the ointment of Applicants' claim 1.

Moreover, Morrison fails to provide any suggestion or motivation to use the polyisobutylene of Grollier et al. in its composition or in the cosmetic composition of '144.

---

from the prior art. Grain Processing Corp. v. American-Maize-Products, Co., 840 F.2d 902, 904 (Fed. Cir. 1988).

[8] *See* U.S. 4,925,653 Examples 1-8, disclosing structurants in the amounts of 6.8% (Example 1), 6% (Example 2), 7.2% (Example 3), 0% (Example 4), 7% (Example 5), 15.6% (Example 6), 4.6% (Example 7), and 0% (Example 8).

Specifically, Morrison is directed to hydrocarbon gels containing medicinal ingredients useful as an ointment, balm, or salve for wounds. No where in Morrison is the purpose of protecting the skin from UV radiation even suggested.

With all due respect, it appears that the Office has used impermissible hindsight analysis and reconstruction when combining the '144, Morrison, and Grollier et al. references. There is simply no suggestion or motivation to do so provided in the references themselves or in the knowledge of one skilled in the art as required for a *prima facie* case of obviousness under M.P.E.P. §2143. As such, claim 1 is patentable over '144 in view of Morrison and further in view of Grollier et al.

Claims 3, 5-13, 15-18, 21, and 27 depend directly or indirectly from claim 1. As such, claims 3, 5-13, 15-18, 21, and 27 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

2. Rejection of claims 1, 3, 5-13, 15-23, and 25 under 35 U.S.C. §103(a).

Claims 1, 3, 5-13, 15-23, and 25 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Krzysik et al. (U.S. 6,149,934) in view of EP 0497144 ('144).

Amended claim 1 is discussed above.

U.S. 6,149,934 ('934) discloses an absorbent article having a bodyside liner that includes a lotion formulation for reducing the abrasion of the skin caused by the liner and for improving skin health. The lotion formulation comprises from about 5 to about 95 weight percent of an emollient, from about 5 to about

95 weight percent of a wax, and, optionally, from about 0.1 to about 25 weight percent of a viscosity enhancer.

As noted by the Office, the '934 reference fails to teach or suggest the rheology enhancers as required in Applicants' claim 1. In an attempt to find each and every element of claim 1 as required by the M.P.E.P. for a determination of *prima facie* obviousness, the Office cites the '144 reference for combination with '934.

The '144 reference is discussed above.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art references must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under numbers (1) and/or (2) above, as the cited references, alone or in combination, have not taught or suggested all of the claimed limitations of Applicants' claim 1 and, further, there is not motivation or suggestion to combine the cited references to arrive at Applicants' claim 1.

As noted above, '934 fails to teach or suggest each and every limitation of claim 1. Specifically, no where in the '934 reference is it taught or suggested to use the specific rheology enhancers of claim 1 in the lotion formulation of '934. At best, the suitable viscosity enhancers disclosed in the '934 reference include polyolefin resins, lipophilic/oil thickeners, ethylene/vinyl acetate copolymers, polyethylene, silica, talc, colloidal silicone dioxide, zinc stearate, cetyl hydroxyl ethyl

cellulose and other modified celluloses, and the like, and mixtures thereof.[9]

The '144 reference fails to overcome the above shortcomings. As noted above, the '144 reference fails to teach or suggest the rheology enhancers required in claim 1. Specifically, while the '144 reference discloses the use of isododecane in combination with diblock styrene-ethylene-propylene copolymers, no where in the '144 reference is it taught to combine isododecane with triblock ethylene/propylene/styrene copolymers, and triblock butylene/ethylene/styrene copolymers as required in the topical ointments of Applicants' claim 1. As such, neither of the cited references disclose each and every limitation required by claim 1.

Furthermore, there is no motivation to combine the '934 and '144 references. More particularly, a close reading of the '934 reference actually teaches away from using the styrene-ethylene-propylene copolymers in the '934 lotion formulation. Specifically, as disclosed in the '934 reference, it is desirable that the formulation of the '934 reference, as with the ointment of the instant invention, is transferable from an absorbent article such as a diaper to the skin to provide improved skin health. As disclosed in the '934 reference, the lotion formulation desirably can be applied to the bodyside liner such that, in use, the lotion formulation transfers to the skin reducing friction and thus irritation.[10] Additionally, it is desirable that the lotion formulation transfers to the skin to improve skin health.[11] As such, why would one skilled in the

[9] U.S. 6,149,934 at column 10, lines 57-62.
[10] *See* U.S. 6,149,934 at column 1, lines 48-53.
[11] *See id* at Abstract and column 3, lines 48-58.

art, reading the '934 reference, be motivated to use the styrene-ethylene-propylene copolymers of '144, which are disclosed as providing a transfer proof composition, in the lotion formulation of the '934, designed to transfer from the absorbent article to the skin? One skilled in the art simply would not, and could not be so motivated. The Office states in the final Office action that one advantage of the styrene-ethylene-propylene copolymer is that it would cause the '934 formulation to be transfer proof and, as such, the formulation would not flake-off the skin. While it may be true that once on the skin, being transfer proof is an advantage, the lotion formulation of '934 (as well as the ointment of the instantly claimed invention) must be capable of easily transferring from an absorbent article to the skin to provide the desired skin benefits. As such, a transfer proof composition, such as provided in the '144 reference, would not be desirable for use in the formulation of the '934 reference (or in the ointment of the instantly claimed invention). As neither of the references alone, or in combination, disclose each and every element of Applicants' claim 1 and, further, there is no motivation to combine the references to arrive at Applicants' claim 1, claim 1 is patentable over the cited references.

Claims 3, 5-13, and 15-22 depend directly or indirectly from claim 1. As such, claims 3, 5-13, and 15-22 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Claim 23 is similar to claim 1 and further requires the topical ointment to comprise from about 0.1% by total weight of the ointment to about 10% by total weight of the ointment of a particulate material, and from about 0.1% by total weight of the ointment to about 10% by total weight of the ointment of a low

HLB surfactant. Claim 23 is patentable for the same reasons as claim 1 set forth above, as well as for the additional elements it requires. Furthermore, claim 25, which directly depends from claim 23, is patentable for the same reasons as claim 23 set forth above, as well as for the additional elements it requires.

3. Rejection of claims 1, 3, 5-6, 10-13, and 19-22 under 35 U.S.C. §103(a).

Claims 1, 3, 5-6, 10-13, and 19-22 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Krzysik et al. (U.S. 6,287,581) in view of EP 0497144 ('144).

Claim 1 is discussed above.

U.S. 6,287,581 ('581) discloses a skin barrier enhancing body side liner on an absorbent article comprising a lipid-enriched hydrophobic composition. The lipid-enriched hydrophobic composition comprises from about 0.1 to about 95 weight percent natural fats or oils, from about 0.1 to about 10 weight percent sterols and sterol derivatives, from about 0.5 to about 20 weight percent of humectant, from about 1 to about 20 weight percent of water-in-oil emulsifying surfactant/surfactant combination having an HLB range from about 3 to about 6, from about 5 to about 95 weight percent emollient, from about 5 to about 95 weight percent wax, and from about 1 to about 25 weight percent viscosity enhancer.

As noted by the Office, the '581 reference fails to teach or suggest the rheology enhancers as required in claim 1. In an attempt to find each and every element of claim 1 as required by the M.P.E.P. for a determination of *prima facie* obviousness, the Office cites '144 for combination with '581.

The '144 reference is discussed above.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art references must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under numbers (1) and (2) above, as the cited references, alone or in combination, have not taught or suggested all of the claimed limitations of Applicants' claim 1, nor is there motivation to combine the references to arrive at each and every limitation of Applicants' claim 1.

As noted above, '581 fails to teach or suggest each and every limitation of claim 1. Specifically, no where in the '581 reference is it taught or suggested to use the specific rheology enhancers of claim 1 in the lipid-enriched hydrophobic composition of '581. At best, the suitable viscosity enhancers disclosed in the '581 reference include polyolefin resins, polyolefin polymers, ethylene/vinyl acetate copolymers, polyethylene, and the like, and mixtures thereof.[12]

The '144 reference fails to overcome the above shortcomings. As noted above, the '144 reference fails to teach or suggest the rheology enhancers required in claim 1. As such, neither of the cited references discloses each and every limitation required by claim 1.

Furthermore, even if the cited references disclose each and every limitation of Applicants' claim 1 (which, as discussed

[12] U.S. 6,287,581 at column 10, lines 25-29.

above, Applicants assert that they do not), there is no motivation or suggestion to combine the cited references to arrive at Applicants' claim 1. Specifically, like the '934 lotion formulation, the lotion of '581 is designed to transfer from an absorbent article to the skin to improve skin health.[13] As such, one skilled in the art, reading the '581 reference, would not, and could not, be motivated to use the styrene-ethylene-propylene copolymers of the '144 composition, which cause the composition to be transfer proof, in the lotion of '581, which desirably can be transferred from the absorbent article to the skin to improve skin health. As neither reference discloses each and every limitation of Applicants' claim 1 and, further, there is no motivation or suggestion to combine the cited references, claim 1 is patentable over the cited references.

Claims 3, 5-6, 10-13, and 19-22 depend directly or indirectly from claim 1. As such, claims 3, 5-6, 10-13, and 19-22 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

[13] *See id* at column 2, lines 32-42.

CONCLUSION

In view of the above, Applicants respectfully request favorable reconsideration and allowance of all pending claims. The Commissioner is hereby authorized to charge any fee in connection with this Letter To Patent And Trademark Office to Deposit Account Number 19-1345 in the name of Senniger, Powers, Leavitt & Roedel.

Respectfully submitted,

/Christopher M. Goff/

Christopher M. Goff, Reg. No. 41,785
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

CMG/JMB/dhm

Via EFS